

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Dane Buchanan	Team: Team # 5	CCRB Case #: 201310891	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 11/11/2013 7:30 PM	Location of Incident: Miller Avenue and Glenmore Avenue	Precinct: 75	18 Mo. SOL 5/11/2015	EO SOL 5/11/2015	
Date/Time CV Reported Mon, 11/11/2013 8:05 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/19/2013 2:05 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Francesco Allevato	02939	948608	075 PCT
2. POM Kamil Pac	28872	950994	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Avinash Surajbali	30256	935811	075 PCT
2. LT David Salmon	00000	895958	075 PCT
3. POM Bryan Curry	16902	946890	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Francesco Allevato	Abuse: PO Francesco Allevato stopped § 87(2)(b)	
B.POM Kamil Pac	Abuse: PO Kamil Pac stopped § 87(2)(b)	
C.POM Francesco Allevato	Discourtesy: PO Francesco Allevato spoke rudely to § 87(2)(b)	
D.POM Francesco Allevato	Abuse: PO Francesco Allevato searched § 87(2)(b)	
E.POM Francesco Allevato	Force: PO Francesco Allevato used a chokehold against § 87(2)(b)	
F.POM Francesco Allevato	Force: PO Francesco Allevato restricted § 87(2)(b)'s breathing.	
G.POM Francesco Allevato	Abuse: PO Francesco Allevato did not obtain medical treatment for § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Case Summary

On November 11, 2013, at approximately 7:30 p.m., § 87(2)(b) was walking on Glenmore Avenue and Miller Avenue in Brooklyn when he was forcibly stopped by PO Francesco Allevato and PO Kamil Pac of the 75th Precinct (**Allegations A and B**), who allegedly took him to the ground and handcuffed him. When § 87(2)(b) asked why he was being handcuffed, PO Allevato allegedly responded with, “Shut the fuck up” (**Allegation C**). Once § 87(2)(b) was picked up from the ground, PO Allevato allegedly searched him (**Allegation D**) while PO Pac used a flashlight to check the surrounding area. § 87(2)(b) continued to complain about his treatment, and PO Allevato allegedly told him to “shut the fuck up” (**Allegation C continued**) while gripping § 87(2)(b)'s neck with both hands (**Allegation E**) and applying pressure for three to four seconds that restricted § 87(2)(b)'s breathing (**Allegation F**). § 87(2)(b) requested an ambulance, and PO Allevato allegedly responded by saying, “Shut the fuck up, you ain’t getting no ambulance” (**Allegation G**). After the officers failed to find anything illegal, § 87(2)(b) was released and PO Allevato allegedly told him to “get the fuck out of here” (**Allegation C continued**). § 87(4-b) § 87(2)(g)

This case was originally assigned to Investigator Sruthi Venigalla. It was reassigned to ASI Dane Buchanan on February 5, 2015.

Mediation, Civil and Criminal Histories

This case is ineligible for mediation. § 87(2)(b) has not filed a Notice of Claim with the City of New York as of July 16, 2014 with regard to the incident. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

This is the first CCRB complaint filed by § 87(2)(b) (encl. 15).

PO Allevato has been a member of service for four years and has had four allegations substantiated by the CCRB. In case 201309187, allegations of threat of arrest, property damaged, refusal to provide name and shield number, and discourtesy were substantiated, while allegations of threat to damage/seize property and discourtesy were unsubstantiated. The Board recommended charges and command discipline. The case is currently pending with the CCRB APU Unit; no NYPD disposition has been decided (encl. 12 – 13).

PO Pac has been a member of service for three years, with no substantiated allegations (encl. 14).

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g)
- § 87(2)(g)

Recommendations

Allegation A – Abuse of Authority: PO Francesco Allevato stopped § 87(2)(b)

Allegation B – Abuse of Authority: PO Kamil Pac stopped § 87(2)(b)

§ 87(2)(b) alleged (encl. 23 – 25) that as he walked home from the store, PO Allevato and PO Pac pulled up alongside him in their van and told him, “Come here.” § 87(2)(b) noted that he asked why and continued walking, and that when he did so PO Pac exited the vehicle and grabbed his arm. § 87(2)(b) told him to get off and jerked his arm away to free himself, prompting PO Pac and PO Allevato to place § 87(2)(b) on the ground and handcuff him. The officers never told § 87(2)(b) why they stopped him and never asked for his name or identification. § 87(2)(b) also noted that after he was handcuffed PO Pac searched the surrounding area with his flashlight with negative results.

PO Pac (encl. 37 – 43) characterized the area around Miller Avenue and Glenmore Avenue as being prone to drugs, grand larceny auto, car break-ins and pipe theft from a nearby construction site. PO Pac stated that he saw § 87(2)(b) walking between parked vehicles and looking into two vehicles for about a minute, although he made no attempt to enter any vehicle. PO Pac approached § 87(2)(b) from behind and noticed that he had one palm face up and was touching that palm with his other hand, as if he was looking at an object in his hand that PO Pac could not see. Due to this behavior, PO Pac suspected that a small object was in § 87(2)(b)'s hand because his hand was cupped. When PO Pac said, “Excuse me sir,” § 87(2)(b) looked backwards and then ran. PO Pac instructed § 87(2)(b) to stop and ran after him. During the run, § 87(2)(b) removed unknown items from his pockets and threw them onto the ground. § 87(2)(b) then voluntarily stopped after running approximately 10 feet and faced PO Pac, asking, “Why the fuck are you guys stopping me?” PO Pac made no physical contact to stop § 87(2)(b). PO Allevato then stood with § 87(2)(b) while PO Pac looked on the ground for the items § 87(2)(b) had thrown. PO Pac could not find any items, and explained his inability to find any narcotics that § 87(2)(b) may have disposed of because they were small in size and there were pools of water and a small amount of snow on the ground. By the time PO Pac got back to where PO Allevato was with § 87(2)(b), § 87(2)(b) had been handcuffed. PO Pac denied that § 87(2)(b) was ever taken to the ground.

§ 87(2)(g) PO Allevato stated that § 87(2)(b) had thrown a couple of small objects he could not identify over a construction fence as he ran, and that he did not know how § 87(2)(b) was finally stopped. PO Allevato also stated he smelled marijuana when he approached § 87(2)(b).

“Police pursuit of an individual ‘significantly impede[s]’ the person’s freedom of movement and thus must be justified by reasonable suspicion that a crime has been, is being, or is about to be committed... Flight alone, however, or even in conjunction with equivocal circumstances that might justify a police request for information, is insufficient to justify pursuit because an individual has a right ‘to be let alone’ and refuse to respond to police inquiry.” People v. Holmes, 81 N.Y.2d 1056, 1057-1058 (1993) (encl. 1 – 3). “Defendant’s later conduct cannot validate an encounter that was not justified at its inception.” People v. Moore, 6 N.Y.3d 496, 498 (2006) (encl. 4 – 7).

§ 87(2)(g)

[REDACTED]

Allegation C – Discourtesy: PO Francesco Allevato spoke rudely to § 87(2)(b)

Allegation D – Abuse of Authority: PO Francesco Allevato searched § 87(2)(b)

Allegation E – Force: PO Francesco Allevato used a chokehold against § 87(2)(b)

Allegation F – Force: PO Francesco Allevato restricted § 87(2)(b) s breathing.

Allegation G – Abuse of Authority: PO Francesco Allevato did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) alleged that PO Allevato used the word “fuck” multiple times and searched his pants and hoodie pockets. He also alleged that PO Allevato grabbed his neck with both hands for three to four seconds, restricting § 87(2)(b) s breathing. § 87(2)(b) complained that the chokehold caused neck pain and his voice to become hoarse, and that when he requested an ambulance from PO Allevato he was told that he was not getting one. After the incident, § 87(2)(b) § 87(2)(b) called 911 for an ambulance to have his neck examined. PO Surajbali and Lieutenant Salmon, who responded to § 87(2)(b) s 911 call, provided information that they were given by § 87(2)(b) that was consistent with § 87(2)(b) s statements to the CCRB and IAB.

PO Allevato and PO Pac denied that § 87(2)(b) was ever cursed at or searched. PO Pac added that § 87(2)(b) had gotten rid of what they suspected was narcotics, which is why he was not searched. They also denied that PO Allevato ever placed his hands on § 87(2)(b) s neck or choked him, or that § 87(2)(b) complained of such an action and requested medical treatment. § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date